

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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BRIAN TOTIN,

Plaintiff,

-V-

OXFORD PROPERTY GROUP LLC and  
SAGI PARIENTE

Defendants.

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**Civil Action No. 21-cv-3129 (PAE)(KHP)**

**ANSWER TO AMENDED COMPLAINT**

Defendant Oxford Property Group LLC, as and for his answer to the Amended Complaint of plaintiff Brian Totin, states as follows:

1. Denies the allegations contained in paragraph 1 of the Amended Complaint.
2. Denies the allegations contained in paragraph 2 of the Amended Complaint.
3. Denies the allegations contained in paragraph 3 of the Amended Complaint.
4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the Amended Complaint.
5. No response is necessary as the allegations contained in paragraph 5 of the Amended Complaint as they are conclusions of law and not facts.
6. Denies the allegations contained in paragraph 6 of the Amended Complaint.
7. Denies the allegations contained in paragraph 7 of the Amended Complaint.
8. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the Amended Complaint.
9. Admits the allegations contained in paragraph 9 of the Amended Complaint.
10. Admits the allegations contained in paragraph 10 of the Amended Complaint.
11. Admits the allegations contained in paragraph 11 of the Amended Complaint.

12. Denies the allegations contained in paragraph 12 of the Amended Complaint.

13. Denies the allegations contained in paragraph 13 of the Amended Complaint.

14. Denies the allegations contained in paragraph 14 of the Amended Complaint.

15. Denies the allegations contained in paragraph 15 of the Amended Complaint.

16. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 16 of the Amended Complaint.

17. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17 of the Amended Complaint.

18. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 18 of the Amended Complaint.

19. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19 of the Amended Complaint.

20. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20 of the Amended Complaint.

21. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 21 of the Amended Complaint.

22. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22 of the Amended Complaint.

23. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 23 of the Amended Complaint.

24. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 24 of the Amended Complaint.

25. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 25 of the Amended Complaint.

26. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 26 of the Amended Complaint.

27. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 27 of the Amended Complaint.

28. No response is necessary as the allegations are conclusions of law and not facts.

29. No response is necessary as the allegations contained in paragraph 29 of the Amended Complaint as they are conclusions of law and not facts.

30. Denies the truth of each and every allegation contained in paragraph 30 of the Amended Complaint.

31. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 31 of the Amended Complaint.

32. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 32 of the Amended Complaint.

33. Denies the truth of each and every allegation contained in paragraph 33 of the Amended Complaint.

34. Denies the truth of each and every allegation contained in paragraph 34 of the Amended Complaint.

35. Denies the truth of each and every allegation contained in paragraph 35 of the Amended Complaint.

36. Denies the truth of each and every allegation contained in paragraph 36 of the Amended Complaint.

37. Admits the allegations contained in paragraph 37 of the Amended Complaint.

38. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 38 of the Amended Complaint.

39. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 39 of the Amended Complaint.

40. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 40 of the Amended Complaint.

41. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 41 of the Amended Complaint.

42. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 42 of the Amended Complaint.

43. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 43 of the Amended Complaint.

44. Denies the truth of each and every allegation contained in paragraph 44 of the Amended Complaint and refers to statute for an interpretation of its provisions.

45. Denies the truth of each and every allegation contained in paragraph 45 of the Amended Complaint and refers to statute for an interpretation of its provisions.

46. Admits the allegations contained in paragraph 46 of the Amended Complaint.

47. No response is necessary as the allegations contained in paragraph 47 of the Amended Complaint as they are conclusions of law and not facts.

48. Denies the truth of each and every allegation contained in paragraph 48 of the Amended Complaint.

49. Denies the truth of each and every allegation contained in paragraph 49 of the Amended Complaint.

50. Denies the truth of each and every allegation contained in paragraph 50 of the Amended Complaint.

51. Denies the truth of each and every allegation contained in paragraph 51 of the Amended Complaint.

52. Denies the truth of each and every allegation contained in paragraph 52 of the Amended Complaint.

53. Denies the truth of each and every allegation contained in paragraph 53 of the Amended Complaint.

54. Denies the truth of each and every allegation contained in paragraph 54 of the Amended Complaint and refers this Court to the letter referred to therein for an interpretation of its provisions.

55. Denies the truth of each and every allegation contained in paragraph 55 of the Amended Complaint.

56. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 56 of the Amended Complaint.

57. Denies the truth of each and every allegation contained in paragraph 57 of the Amended Complaint.

58. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 58 of the Amended Complaint.

59. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 59 of the Amended Complaint.

60. Denies the truth of each and every allegation contained in paragraph 60 of the Amended Complaint.

61. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 61 of the Amended Complaint.

62. Denies the truth of each and every allegation contained in paragraph 62 of the Amended Complaint.

63. Denies the truth of each and every allegation contained in paragraph 63 of the Amended Complaint.

64. Denies the truth of each and every allegation contained in paragraph 64 of the Amended Complaint.

65. Denies the truth of each and every allegation contained in paragraph 65 of the Amended Complaint.

66. Denies the truth of each and every allegation contained in paragraph 66 of the Amended Complaint.

67. Defendant repeats, reiterates and realleges each and every allegation contained in paragraphs “1” through “66” of this Answer, with the same force and effect as if fully set forth herein.

68. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 68 of the Amended Complaint.

69. Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 69 of the Amended Complaint.

70. Denies the truth of each and every allegation contained in paragraph 70 of the Amended Complaint.

71. Defendant repeats, reiterates and realleges each and every allegation contained in paragraphs “1” through “70” of this Answer, with the same force and effect as if fully set forth herein.

72. No response is necessary as the allegations contained in paragraph 72 of the Amended Complaint as they are conclusions of law and not facts.

73. Denies the truth of each and every allegation contained in paragraph 73 of the Amended Complaint.

74. Denies the truth of each and every allegation contained in paragraph 74 of the Amended Complaint.

75. Denies the truth of each and every allegation contained in paragraph 75 of the Amended Complaint.

76. Defendant repeats, reiterates and realleges each and every allegation contained in paragraphs “1” through “75” of this Answer, with the same force and effect as if fully set forth herein.

77. Denies the truth of each and every allegation contained in paragraph 77 of the Amended Complaint.

78. Denies the truth of each and every allegation contained in paragraph 78 of the Amended Complaint.

79. Denies the truth of each and every allegation contained in paragraph 79 of the Amended Complaint.

80. Defendant repeats, reiterates and realleges each and every allegation contained in paragraphs “1” through “79” of this Answer, with the same force and effect as if fully set forth herein.

81. Denies the truth of each and every allegation contained in paragraph 81 of the Amended Complaint.

82. Denies the truth of each and every allegation contained in paragraph 82 of the Amended Complaint.

83. Denies the truth of each and every allegation contained in paragraph 83 of the Amended Complaint.

84. Defendant repeats, reiterates and realleges each and every allegation contained in paragraphs “1” through “83” of this Answer, with the same force and effect as if fully set forth herein.

85. Denies the truth of each and every allegation contained in paragraph 85 of the Amended Complaint.

86. Denies the truth of each and every allegation contained in paragraph 86 of the Amended Complaint.

87. Denies the truth of each and every allegation contained in paragraph 87 of the Amended Complaint.

88. Defendant repeats, reiterates and realleges each and every allegation contained in paragraphs “1” through “87” of this Answer, with the same force and effect as if fully set forth herein.

89. Denies the truth of each and every allegation contained in paragraph 89 of the Amended Complaint.

90. Denies the truth of each and every allegation contained in paragraph 90 of the Amended Complaint.



91. Denies the truth of each and every allegation contained in paragraph 91 of the Amended Complaint.

92. Denies the truth of each and every allegation contained in paragraph 92 of the Amended Complaint.

### **AFFIRMATIVE DEFENSES**

93. Defendant OPG asserts the following affirmative defenses and reserve the right to amend this Answer to assert other and further defenses when and if, in the course of its investigation, discovery, or preparation for trial it becomes appropriate.

94. These defenses are set forth cumulatively and in the alternative.

#### **FIRST AFFIRMATIVE DEFENSE**

95. The Complaint fails to state a claim upon which relief can be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

96. Plaintiff lacks a valid copyright registration.

#### **THIRD AFFIRMATIVE DEFENSE**

97. The Plaintiff lacks standing to recover damages or attorneys' fees for the alleged copyright infringement.

#### **FOURTH AFFIRMATIVE DEFENSE**

98. Plaintiff's asserted copyright registration for the work is invalid and/or unenforceable for one or more of the following reasons: (i) Plaintiff is not the owner of the work, (ii) the asserted work lacks requisite originality, (iii) Plaintiff did not properly register copyrights in the work.

**FIFTH AFFIRMATIVE DEFENSE**

99. Any alleged infringement of the subject work was innocent, passive, not willful and without notice of any alleged claim of copyright.

**SIXTH AFFIRMATIVE DEFENSE**

100. Plaintiff suffered no damages.

**SEVENTH AFFIRMATIVE DEFENSE**

101. The Plaintiff is not entitled to recover damages for any infringement of the asserted copyright because Plaintiff failed to meet the copyright notice requirements of the Copyright Act including Chapter 4 of the Act.

**EIGHTH AFFIRMATIVE DEFENSE**

102. The claims are barred in whole or part by waiver and/or laches.

**NINTH AFFIRMATIVE DEFENSE**

103. The doctrine of implied license.

**TENTH AFFIRMATIVE DEFENSE**

104. The claims are barred by the doctrine of unclean hands.

**ELEVENTH AFFIRMATIVE DEFENSE**

105. At all times Defendant acted in a commercially reasonable and lawful manner.

**TWELVTH AFFIRMATIVE DEFENSE**

106. Plaintiff has suffered no harm or irreparable harm.

**THIRTEENTH AFFIRMATIVE DEFENSE**

107. Plaintiff is not entitled to statutory damages.

**FOURTEENTH AFFIRMATIVE DEFENSE**

108. Any use or display of the photographs constitutes a permitted fair use.

**FIFTEENTH AFFIRMATIVE DEFENSE**

109. Plaintiff failed to join necessary parties.


**SIXTEENTH AFFIRMATIVE DEFENSE**

110. The claims are barred in whole or part by res judicata, collateral estoppel, and/or issue preclusion.

**WHEREFORE**, Defendant demands judgment (a) dismissing each of the claims asserted in the Complaint; (b) awarding the costs and disbursements of this proceeding, including reasonable attorneys' fees; and (c) granting such other and further relief as the Court may deem proper.

Dated: September 15, 2021

ROSENBERG FELDMAN SMITH, LLP

By: 

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